

SECOND REGULAR SESSION

SENATE BILL NO. 571

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR CAUTHORN.

Pre-filed December 1, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

3110S.02I

AN ACT

To repeal sections 563.011, 563.016, 563.026, 563.031, and 563.036, RSMo, and to enact in lieu thereof seven new sections relating to the justifiable use of force to protect persons and property.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 563.011, 563.016, 563.026, 563.031, and 563.036, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 563.011, 563.016, 563.026, 563.031, 563.036, 563.037, and 563.065, to read as follows:

563.011. As used in this chapter **the following terms mean:**

(1) "Deadly force" [means], physical force which the actor uses with the purpose of causing or which he knows to create a substantial risk of causing death or serious physical injury[.];

(2) "Dwelling" [means any building or inhabitable structure, though movable or temporary, or a portion thereof, which is for the time being the actor's home or place of lodging.], **a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof, including a tent, and is designed to be occupied by people lodging therein at night;**

(3) ["Premises" includes any building, inhabitable structure and any real property.

(4)] "Private person" [means], any person other than a law enforcement officer;

(4) **"Residence", a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest;**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 (5) "Vehicle", a conveyance of any kind, whether or not
18 motorized, which is designed to transport people or property.

 563.016. 1. A person who uses force as permitted in section
2 563.031, or in section 563.036, is justified in using such force and is
3 immune from criminal prosecution and civil action for the use of such
4 force, unless the person against whom force was used is a law
5 enforcement officer acting in the performance of his or her official
6 duties and the officer identified himself or herself in accordance with
7 any applicable law or the person using force knew or reasonably should
8 have known that the person was a law enforcement officer. As used in
9 this subsection, the term "criminal prosecution" includes arresting,
10 detaining in custody, and charging or prosecuting the defendant.

11 2. A law enforcement agency may use standard procedures for
12 investigating the use of force as described in subsection 1 of this
13 section. Notwithstanding the provisions of subsection 1 of this section,
14 the agency may arrest the person for using force if it determines that
15 there is probable cause that the force that was used was unlawful.

16 3. The court shall award reasonable attorney's fees, court costs,
17 compensation for loss of income, and all expenses incurred by the
18 defendant in defense of any civil action brought by a plaintiff if the
19 court finds that the defendant is immune from prosecution as provided
20 in subsection 1 of this section.

21 4. The fact that **other** conduct is justified under this chapter does not
22 abolish or impair any remedy for such conduct which is available in any civil
23 actions.

 563.026. 1. Unless inconsistent with other provisions of this chapter
2 defining justifiable use of physical force, or with some other provision of law,
3 conduct which would otherwise constitute any crime [other than a class A felony
4 or murder] is justifiable and not criminal when it is necessary as an emergency
5 measure to avoid an imminent public or private injury which is about to occur by
6 reason of a situation occasioned or developed through no fault of the actor, and
7 which is of such gravity that, according to ordinary standards of intelligence and
8 morality, the desirability of avoiding the injury outweighs the desirability of
9 avoiding the injury sought to be prevented by the statute defining the crime
10 charged.

11 2. The necessity and justifiability of conduct under subsection 1 may not

12 rest upon considerations pertaining only to the morality and advisability of the
13 statute, either in its general application or with respect to its application to a
14 particular class of cases arising thereunder. Whenever evidence relating to the
15 defense of justification under this section is offered, the court shall rule as a
16 matter of law whether the claimed facts and circumstances would, if established,
17 constitute a justification.

18 3. The defense of justification under this section is an affirmative defense.

563.031. [1.] A person [may, subject to the provisions of subsection 2 of
2 this section, use physical force upon another person when and to the extent he
3 reasonably believes such force to be necessary to defend himself or a third person
4 from what he reasonably believes to be the use or imminent use of unlawful force
5 by such other person, unless:

6 (1) The actor was the initial aggressor; except that in such case his use
7 of force is nevertheless justifiable provided

8 (a) He has withdrawn from the encounter and effectively communicated
9 such withdrawal to such other person but the latter persists in continuing the
10 incident by the use or threatened use of unlawful force; or

11 (b) He is a law enforcement officer and as such is an aggressor pursuant
12 to section 563.046; or

13 (c) The aggressor is justified under some other provision of this chapter
14 or other provision of law;

15 (2) Under the circumstances as the actor reasonably believes them to be,
16 the person whom he seeks to protect would not be justified in using such
17 protective force.

18 2. A person may not use deadly force upon another person under the
19 circumstances specified in subsection 1 of this section unless he reasonably
20 believes that such deadly force is necessary to protect himself or another against
21 death, serious physical injury, rape, sodomy or kidnapping or serious physical
22 injury through robbery, burglary or arson.

23 3. The justification afforded by this section extends to the use of physical
24 restraint as protective force provided that the actor takes all reasonable measures
25 to terminate the restraint as soon as it is reasonable to do so.

26 4. The defendant shall have the burden of injecting the issue of
27 justification under this section] **is justified in using force, except deadly**
28 **force, against another when, and to the extent, that the person**
29 **reasonably believes such force is necessary to defend himself or herself**

30 or another person against the other individual's imminent use of
31 unlawful force. However, a person is justified in the use of deadly force
32 and does not have a duty to retreat if:

33 (1) He or she reasonably believes that such force is necessary to
34 prevent imminent death or great bodily harm to himself or herself or
35 another person or to prevent the imminent commission of a dangerous
36 felony, as defined in section 556.061, RSMo; or

37 (2) Those circumstances permitted under section 563.037 are
38 present.

563.036. 1. A person [in possession or control of premises or a person who
2 is licensed or privileged to be thereon, may, subject to the provisions of subsection
3 2 of this section, use physical force upon another person when and to the extent
4 that he reasonably believes it necessary to prevent or terminate what he
5 reasonably believes to be the commission or attempted commission of the crime
6 of trespass by the other person.

7 2. A person may use deadly force under circumstances described in
8 subsection 1 of this section only:

9 (1) When such use of deadly force is authorized under other sections of
10 this chapter; or

11 (2) When he reasonably believes it necessary to prevent what he
12 reasonably believes to be an attempt by the trespasser to commit arson or
13 burglary upon his dwelling; or

14 (3) When entry into the premises is made or attempted in a violent and
15 tumultuous manner, surreptitiously, or by stealth, and he reasonably believes
16 that the entry is attempted or made for the purpose of assaulting or offering
17 physical violence to any person or being in the premises and he reasonably
18 believes that force is necessary to prevent the commission of a felony.

19 3. The defendant shall have the burden of injecting the issue of
20 justification under this section] is justified in the use of force, except
21 deadly force, against another individual, when and to the extent, that
22 the person reasonably believes such conduct is necessary to prevent or
23 terminate the other individual's trespass on, or other tortious or
24 criminal interference with, either real property other than a dwelling
25 or personal property, which is lawfully in his or her possession, in the
26 possession of another person who is a member of his or her immediate
27 family or household, or of a person whose property he or she has a

28 legal duty to protect. However, the person is justified in the use of
29 deadly force only if he or she reasonably believes that such force is
30 necessary to prevent the imminent commission of a dangerous felony
31 as defined in section 556.061, RSMo. A person does not have a duty to
32 retreat if the person is in a place where he or she lawfully has a right
33 to be.

563.037. 1. A person is presumed to have held a reasonable fear
2 of imminent peril of death or great bodily harm to himself or herself or
3 another person when using defensive force that is intended or likely to
4 cause death or great bodily harm to another person if:

5 (1) The person against whom the defensive force was used was
6 in the process of unlawfully and forcefully entering, or had unlawfully
7 and forcibly entered, a dwelling, residence, or occupied vehicle, or if
8 that person had removed or was attempting to remove another person
9 against his or her will from the dwelling, residence, or occupied
10 vehicle; and

11 (2) The person who used defensive force knew or had reason to
12 believe that an unlawful and forcible entry or unlawful and forcible act
13 was occurring or had occurred.

14 2. The presumption set forth in subsection 1 of this section does
15 not apply if:

16 (1) The person against whom the defensive force is used has the
17 right to be in or is a lawful resident of the dwelling, residence, or
18 vehicle, such as an owner, lessee, or titleholder, and there is not an
19 injunction for protection from domestic violence or a written pretrial
20 supervision order of no contact against such person; or

21 (2) The person or persons sought to be removed is a child or
22 grandchild, or is otherwise in the lawful custody or under the lawful
23 guardianship of the person against whom the defensive force is used;
24 or

25 (3) The person who uses defensive force is engaged in an
26 unlawful activity or is using the dwelling, residence, or occupied
27 vehicle to further an unlawful activity; or

28 (4) The person against whom the defensive force is used is a law
29 enforcement officer who enters or attempts to enter a dwelling,
30 residence, or vehicle in the performance of his or her official duties
31 and the officer identifies himself or herself in accordance with any

32 applicable law or the person using force knew or reasonably should
33 have known that the person entering or attempting to enter was a law
34 enforcement officer.

35 3. A person who is not engaged in an unlawful activity and who
36 is attacked in any other place where he or she lawfully has a right to
37 be has no duty to retreat and has the right to use force against force
38 from another person, including deadly force, if he or she reasonably
39 believes it is necessary to do so to prevent death or great bodily harm
40 to himself or herself or another person or to prevent the commission of
41 a dangerous felony, as defined in section 556.061, RSMo.

42 4. A person who unlawfully and by force enters or attempts to
43 enter a person's dwelling, residence, or occupied vehicle is presumed
44 to be doing so with the intent to commit an unlawful act involving force
45 or violence.

563.065. The justification described in sections 563.011 to 563.061
2 is not available to a person who:

3 (1) Is attempting to commit, committing, or escaping after the
4 commission of, a dangerous felony as defined in section 556.061, RSMo;
5 or

6 (2) Initially provokes the use of force against himself or herself,
7 unless:

8 (a) Such force is so great that the person reasonably believes
9 that he or she is in imminent danger of death or great bodily harm and
10 that he or she has exhausted every reasonable means to escape such
11 danger other than the use of force which is likely to cause death or
12 great bodily harm to the assailant; or

13 (b) In good faith, the person withdraws from physical contact
14 with the assailant and indicates clearly to the assailant that he or she
15 desires to withdraw and terminate the use of force, but the assailant
16 continues or resumes the use of force.

✓